

BEFORE THE STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

KEITH AND DEANNA KESSLER
V.
MINNESOTA POWER, A DIVISION OF ALLETE, INC.

CASE NO. PU-20-194

PRE-FILED TESTIMONY OF TODD SIMMONS
ON BEHALF OF MINNESOTA POWER

March 8, 2021

33 a PSC public hearing before and was stepping into Dave's role, I wanted to watch a
64 PSC hearing process. So, essentially, I just went as an observer.

65

66 **Q. At the time of the September 13, 2013 public hearing, did you know the**
67 **Kesslers?**

68 A. I was aware that Mr. Kessler was the business agent for the carpenters and
69 millwrights local union, but I did not know the Kesslers personally.

70

71 **Q. Are you aware that, after learning Scott Monroe was not at the September 13,**
72 **2013 public hearing, the Kesslers revised their initial written discovery**
73 **responses to allege that the Kesslers raised a concern with Matt Freudenrich**
74 **and you regarding Turbine 441 and the Section 15 Structure at a break in the**
75 **hearing, that Matt "blew up" at the Kesslers, and that you "tried to smooth**
76 **things over and said come over to our office and we will discuss all this"**
77 **(Kessler's Supplemental Answers to Minnesota Power's First Set of Request**
78 **for Admissions, Interrogatories, and Requests for Production of Documents to**
79 **Petitioners, Supp. Resp. to Request for Admission No. 8)?**

80 A. Yes, I am aware the Kesslers made those revised allegations.

81

82 **Q. Are you also aware that the Kesslers assert in their Second Revised Complaint**
83 **that "during the public hearing" the Kesslers "told Minnesota Power's**
84 **representatives that they will be using the house at issue, and specifically told**
85 **Minnesota Power representatives that their son will be living there as soon as**
86 **he gets back from college" (Second Revised Complaint, ¶ 4(2))?**

87 A. Yes, I am aware of those allegations in the Kesslers' complaint.

88

89 **Q. On September 13, 2013, did you talk with the Kesslers before, during, or after**
90 **the public hearing?**

91 A. No.

92

93 **Q. Did you review the public hearing sign in sheet filed in Case No. PU-13-127**
94 **and provided as MP Exhibit 2-5 to Mr. Gartner's Direct Testimony?**

95 A. Yes.

96

97 **Q. At the time of the September 13, 2013 public hearing, did you personally know**
98 **the Minnesota Power employees listed on the hearing sign in sheet?**

99 A. Yes.

100

101 **Q. To your knowledge, does the sign in sheet identify the Minnesota Power**
102 **employees who attended the hearing?**

103 A. Yes.

104

105 **Q. On September 13, 2013, did you observe or hear any Minnesota Power**
106 **employees talking with the Kesslers before, during, or after the public**
107 **hearing?**

108 A. No.

109

110 **Q. Had there been an incident where a Minnesota Power employee "blew up" at**
111 **the Kesslers at a break in the September 13, 2013 public hearing, would you**
112 **have noticed such an event?**

113 A. Yes. Given the size of the spaces, and how out of place it would have been, I
114 believe I would have noticed if anyone had "blown up" at someone else during a
115 break, either in the room or in the hallway.

116

117 **Q. Had there been an incident where a Minnesota Power employee "blew up" at**
118 **the Kesslers at a break in the September 13, 2013 public hearing, what would**
119 **you have done?**

120 A. Any instance of a Minnesota Power employee "blowing up" at someone at a public
121 hearing would be taken seriously, as it could have long-term impacts on not just a
122 single project, but potentially on Minnesota Power's reputation generally. As a more
123 senior member of the Minnesota Power project development team, had there been

124 an incident between a Minnesota Power employee and the Kesslers or anyone else
125 during the PSC public hearing, I would have stepped in to try and resolve the
126 situation and would have taken steps to ensure the issue was addressed.

127

128 **Q. Is it Minnesota Power's practice to ignore landowner concerns or hide them**
129 **from the PSC?**

130 A. No. As the owner-operator of multiple generation projects in North Dakota and other
131 states, it is extremely important to Minnesota Power to have a good working
132 relationship with its landowner-partners, with the local community where its projects
133 are located, and with the regulators, including the PSC. As a result, Minnesota
134 Power's practice is to work cooperatively with landowners to try to resolve concerns,
135 where possible, because it is the right way of doing business and because we
136 understand that failing to do business the right way may result in much larger issues
137 down the line.

138

139 Additionally, on this Project in particular, Minnesota Power notified its landowners
140 about the CSC Application and the public hearing. On August 9, 2013, Minnesota
141 Power sent a letter to participating landowners that informed them of the public
142 hearing on the CSC Application, stated that a map of the Project layout was
143 available on the PSC's website, and provided the website address and case
144 number. The letter also provided contact information for the Project's right-of-way
145 agents, Wade Isaacson and Scott Monroe, and encouraged landowners to contact
146 them with "any immediate questions or concerns." A copy of this letter, which I
147 signed, was included in the supplemental materials filed with the PSC on August 7,
148 2013, provided as Exhibit 2 at the September 13, 2013 public hearing, and is
149 provided as **MP Exhibit 2-2** to my testimony. Minnesota Power sent these letters
150 out to try to solicit, identify, and address landowner concerns.

151

152 Moreover, had a landowner raised a concern at the public hearing, Minnesota Power
153 had the ability to make changes to the Project design without affecting the Project's
154 construction or operation schedule. As a result, contrary to the Kesslers'

55 contentions, there simply wasn't a reason for Minnesota Power to ignore or hide a
156 concern had it been known.

157

158 **Q. Are you aware of any instance where a landowner's concern about the**
159 **proposed location of a turbine on this Project or any other Minnesota Power**
160 **wind project was entirely disregarded?**

161 A. No.

162

163 **Q. Prior to the PSC's issuance of an Order granting a Certificate of Site**
164 **Compatibility to the Project on September 25, 2013 ("Order"), were you aware**
165 **of any planned use by the Kesslers or their sons of the Section 15 Structure as**
166 **a residence?**

167 A. No.

168

169 **Q. When did you first learn the Kesslers had a concern regarding the placement**
70 **of Turbine 441 in relation to the Section 15 Structure?**

171 A. I first learned of a concern on February 9, 2017, when Mr. Kessler came to the
172 Project's New Salem, North Dakota office to discuss reclamation issues. As he was
173 leaving, Mr. Kessler mentioned to Wade Isaacson (also with Minnesota Power) and
174 me that Turbine 441 was too close to a house his son was living in, and noted a
175 concern regarding noise.

176

177 **V. CONCLUSION**

178

179 **Q. Does this conclude your Direct Testimony?**

180 A. Yes.

181